REMARKS/ARGUMENTS

Claims 1-20 are presented. Claims 1-4, 6, 9-12, 14, 17 and 19 were previously canceled without prejudice. No claims are amended. No claims are added. Claims 5, 7, 8, 13, 15, 16, 18 and 20 are pending in the application. Reexamination and reconsideration of the application, in light of the following remarks, are respectfully requested. Applicant thanks the Examiner for participating in an interview on January 28, 2009, in which she discussed the claim limitations discussed below and the cited prior art with the Applicant's representative.

All of the pending claims stand finally rejected as obvious over Nishihara (US 7,050,455) in view of Applicant's Admitted Prior Art (AAPA) in the Final Office action, dated November 3, 2008 (FOA). Applicant respectfully traverses these rejections. Specifically, Applicant submits that neither reference teaches or suggests, among other limitations: setting a packet size in advance; or setting an ID code indicating the presence or absence of a succeeding packet.

Setting Packet Size in Advance/Predetermined Packet Size

Independent claims 5 and 13 respectively include the following limitations, among others: "setting in advance the packet comprised of the report ID and the transmission data to be a predetermined size" (claim 5); and "a packet formed by the communication data format...has a predetermined size" (claim 13). The Examiner has stated that Fig. 2 of Nishihara teaches or suggests these limitations because it shows "a basis frame format of the layer 1 frame... the layer 1 frame includes the layer 1 frame header (6 byte) and the layer 1 frame payload (0-64Kbytes)". (FOA, p. 4). Applicant respectfully disagrees.

Nishihara teaches that the packet length is indicated in the packet header, and the payload is "a variable length field (0-64 Kbytes)". (Col. 10, lines 19-20, 23; Col. 15, line 67). Applicant can find no teaching or suggestion in Nishihara that one skilled in the art should set or determine the packet size in advance of the time of transmission of the specific packet.

In fact, the only discussion in Nishihara that relates to determination of packet size appears to teach that the packet size should *not* be determined in advance, but should vary based on the specific frame at issue. In order to adjust "the best effort IP layer 1 frame...to the length L" (idle time), "the length L...changes depending on the lengths of the...frames." Col. 16, lines 44-53. Thus, Nishihara teaches that the size of the packet is determined at the time the specific packet is prepared and transmitted, comparing the size of the message frame, a minimal dummy frame, and L, the idle time in which the frame can be transmitted. If, for example, it is determined that the "EOM frame length M" + "a minimal dummy frame length D" is shorter than a length L, the length L is changed, and the packet is sent out with length M+D, which is determined at the time it is sent (rather than in advance or predetermined) and specified in that packet's header. Col. 5, lines 29-33; Col. 6, lines 15-16. Nishihara therefore teaches that the packet length should be determined based on the particular frame for transmission, rather than be determined in advance.

As Applicant can find no teaching or suggestion in Nishihara of at least this limitation, and Nishihara appears to teach away from this limitation, Applicant submits that claims 5 and 13 are not obvious over the cited references and requests that the rejections to these and the remaining dependent claims be withdrawn.

"Presence" and "Absence" ID Codes

Independent claims 5 and 13 also recite a report ID having either "an ID code 'presence' that indicates the presence of the succeeding packet or an ID code 'absence' that indicates the absence of the succeeding packet" (claims 5 and 13). The Examiner has stated that Nishihara teaches or suggests this limitation because "FIG. 6 shows 'Frame Mode' in layer 1 header, ID code such as '10' indicates the presence of the succeeding packet and ID code '01' indicates the absence of the succeeding packet". OA, p. 4. Applicant respectfully disagrees.

Nishihara does not appear to have any codes that indicate whether or not a succeeding packet exists. The "frame mode identifier", to which the Examiner points, refers to the sequence of the data in the frame to its position in the layer 2 frame. Nishihara describes the "frame mode" identifier as indicating "the correspondence between the layer 1 frame and the layer 2 frame contained therein." Col. 10, lines 27-29. Rather than indicating whether a succeeding packet is 'present' or 'absent', this identifier merely indicates the *sequence* of the frame relative to other frames in layer 2. The frames are then "received and transferred in sequence." Col. 15, line 21.

Contrary to the assertion of the Examiner, the frame mode identifier "01" does not indicate the absence of a succeeding packet, but rather that the frame is a "BOM" (beginning of message) frame, and should be received and transferred in sequence before the "COM" (continuation of message) and the "EOM" (end of message) frames. Col. 14, lines 3-7. Likewise, the frame mode identifier "10" does not indicate whether a succeeding packet is present or absent, but that the frame should be sequenced as a COM frame – between the BOM and EOM frames during transmission. *See* id.

Although it might be argued that one may extrapolate from the sequence of the frame whether a succeeding packet exists (e.g., BOM or COM indicates that there is a succeeding packet and EOM indicates that there is no succeeding packet), Nishihara teaches away from such an extrapolation in favor of independently determining whether a succeeding frame exists. For example, "if no EOM frame exists...or if the update of the best effort IP transfer space length L has been conducted, the frame transmission device judges whether a best effort IP layer 1 frame to be transferred next exists or not." Col. 17, lines 62-67. If the "EOM" indicator indicated the absence of a succeeding packet, this additional step would be unnecessary. Moreover, Nishihara teaches that the EOM frame is sometimes succeeded by another frame (e.g., a dummy frame) and sometimes it is not. Compare, e.g., FIG. 21 (elements 2201, 2211, 2208, etc.). Thus, not only does

Nishihara fail to teach or suggest an ID code "presence" or "absence" that indicates the presence or absence of a succeeding packet, but *attempted extrapolation* of this information from the frame mode identifier would likely be misleading.

As neither of the cited references teach or suggest at least these limitations, Applicant respectfully submits that claims 5, 13 and their dependent claims are nonobvious over the prior art, and therefore requests that their rejections be withdrawn.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Reexamination and reconsideration of the application, as amended, are requested.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (310) 785-4600 to discuss the steps necessary for placing the application in condition for allowance.

If there are any fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-1314.

Respectfully submitted,
HOGAN & HARTSON L.L.P.

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